JD(ATL)–19–14
Levittown, PA

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
ATLANTA BRANCH OFFICE

STUDENT TRANSPORTATION of AMERICA, INC.

and **Case 04-RC-113131**

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, LOCAL 115

Norton H. Brainard, III, Esq., for the Petitioner.
Diane A. Hauser & Gregory Christian, Esqs. (Pasiner-Litvin, LLP), for the Employer.

Report on Challenges and Objections

IRA SANDRON, Administrative Law Judge. On March 13, 2014, the Regional Director of Region 4 issued a notice of hearing on challenged ballots and objections to election, and I conducted a hearing in this matter as the designated Hearing Officer, from April 8–10, 2014, in Philadelphia, Pennsylvania. Student Transportation of America, Inc. (STA or the Employer) and International Brotherhood of Teamsters, Local 115 (the Petitioner or the Union), hereinafter "the parties," each had attorney representation; the General Counsel did not. The following uncontroverted facts are set out in documents comprising General Counsel's Exhibit 1, unless otherwise specified.

The Petitioner filed an RC petition on September 11, 2013,[1] for the following unit:

> Included: All CDL school bus drivers, mechanics and fuelers located at the Employer's Levittown, Pennsylvania, facility (the facility).
>
> Excluded: All others including guards and supervisors as defined in the Act.

[1] All dates hereinafter are in 2013 unless otherwise indicated.

On September 25, the parties entered into a Stipulated Election Agreement (the stipulation) for an election to be conducted on October 23 among employees who were employed during the payroll period ending Friday, September 20, in the following unit:

> Included: All full-time and regular part-time drivers and mechanics employed by the Employer at the facility.
>
> Excluded: All professional employees, confidential employees, guards, and supervisors as defined in the Act.

The election could not be held on October 23 due to the partial government shutdown. The parties verbally agreed, with the Regional Director's approval, to reschedule the election to November 14. There was no agreement to change either the September 20 eligibility date or the included classifications; indeed, the record does not disclose that the parties even had any such discussions.

On November 14, the election was conducted between 9:30 and 11:30 a.m. in the facility's second floor board conference room. Of approximately 64 eligible voters, 24 cast ballots for the Petitioner, 23 voted against the Petitioner, and 11 were challenged by the Petitioner: (1) seven employees on the Excelsior List, on the basis that they were not employed as of the September 20 eligibility date. At the hearing, the Employer agreed, so their eligibility is no longer in question; (2) John Evans, Rebecca (Becky) Kurtz, Matthew Smith, and Traci Williams (the challenges), on various grounds. The Petitioner no longer avers that any of the challenges were statutory supervisors within the meaning of Section 211(c) of the Act.[2] However, it continues to assert that all of them were ineligible to vote because they were "closely aligned" with management (in other words, were managerial employees) and/or because they lacked a community of interest with unit employees, overlapping issues.

On November 20, the Petitioner filed amended objections to the election, alleging 10 actions by which the Employer interfered with a fair election. The Petitioner now argues 8 grounds (it withdrew objections numbers 7 and 10 during the investigation).

Witnesses and Credibility

The following persons testified:

(1) Evans, Kurtz, Smith, and Williams.

(2) On the Petitioner's behalf, Barbara Hansell, an STA driver; Nicoll O'Donnell, a driver for the Bristol Township School District; and union representatives Charles Argeros and Frank Pease.

[2] See, e.g., Tr. 71.

(3) On the Employer's behalf, STA managers John Carey and Kelly Wood.

Many facts are undisputed. I will address particular credibility issues under the applicable challenge or objection. Following are my overall credibility assessments of those who testified in detail about the challenges. I note here that some witnesses were fully credible, others only partially so, and find it appropriate to cite the well-established precept that "'[N]othing is more common in all kinds of judicial decisions than to believe some and not all' of a witness' testimony." *Jerry Ryce Builders,* 352 NLRB 1262, 1262 fn. 2 (2008), citing *NLRB v. Universal Camera Corp.*, 179 F.2d 749, 754 (2d Cir. 1950), revd. on other grounds 340 U.S. 474 (1951). The trier of fact must consider the plausibility of a witness' testimony and appropriately weigh it with the evidence as a whole. *Golden Hours Convalescent Hospitals,* 182 NLRB 796, 797–799 (1970).

Evans, Hansell, and Kurtz appeared credible. Thus, they answered questions readily and without hesitation and did not appear to try to skew their answers, and their testimony was generally internally consistent and comported with that of other witnesses. Accordingly, I credit them in general, and over the witnesses who follow.

Smith was internally consistent but noticeably defensive, even irritable, at times, especially when answering questions regarding when he received his training and receipt of the "S" endorsement required to drive buses with students aboard. In this regard, he did not seem interested in trying to recall the dates, simply repeating that he had no recollection.

Wood was credible overall but offered no satisfactory explanation for why she gave Williams certain benefits that Evans and Kurtz, but not drivers, received.[3]

O'Donnell's testimony contained several notable internal inconsistencies and contradictions, suggesting that she was trying to answer in a light favorable to the Petitioner, and undermining her credibility. Thus, she first testified that during the period from August 31 to September 20, she heard Smith on the radio "every day" but then changed this to "at least four days a week," and, finally, to "three or four days."[4] She first testified that she saw Smith "tons of times" in the morning," and when the Employer's counsel questioned this, answered equivocally, "I guess, absolutely."[5]

In testifying about how the four challenges dressed vis-à-vis drivers, she first testified that Evans, Kurtz, and Williams dressed in "normal clothes," then that Kurtz and Williams dressed more formally but Evans and Smith dressed like "normal guys,"

[3] "Drivers" hereinafter refers to regular and standby drivers, which classifications neither party has contended are outside of the unit.

[4] Tr. 163–164.

[5] Tr. 168–169.

but then that Evans and Smith wore "nicer clothes."[6] Hansell, in contrast, testified that nothing stood out in Evans', Kurtz', and Williams' attire.

Williams was frequently evasive in answering questions, and her testimony contained several internal contradictions suggesting, as with O'Donnell, that she was trying to slant her testimony. For example, she first testified that her job duties did not change from August 28 until the election (November 14) but then testified that they changed in October. When I asked her if she dispatched (prior to November 14), she gave the contradictory answer: "No, I did not actively sit at that desk, no. I would cover, I would help, yes."[7]

Williams also was evasive in answering whether she had her own office, first saying no, that she was in a work area, but later testifying that she had an office next to Evans by the time of the election. In contrast to her testimony, Petitioner's Exhibit 25, stipulated to be the office layout from August 28–November 14, reflects that she had an office during that period. Further, Kurtz, a more credible witness, testified that Williams had an office in August.

Based on the entire record, including testimony and my observations of witness demeanor, documents, and stipulations, as well as the thoughtful posthearing briefs that the Employer and the Petitioner filed, I find the following.

Background

STA, a Delaware corporation with corporate headquarters in Wall, New Jersey, is engaged in the transportation of students from approximately 150 facilities throughout North America, including the facility, from which it provides transportation services to the Bristol Township School District (the Township). As stated in the stipulation, STA is an employer engaged in commerce within the meaning of the Act.

On February 27, STA and the Township entered into an agreement for school transportation services commencing with the 2013–2014 school year, effective from July 1 through June 20, 2018.[8] Their contractual relationship has three components: (1) STA provides drivers, buses, and routing services; (2) STA leases buses to the Township; and (3) STA manages all drivers, both those of STA and those of the Township. In September, there were about 30 Township drivers. On September 25, under the auspices of the state counterpart to the NLRB, the Union won an election to represent them.

Pursuant to the agreement, the Township provides a secure parking area and leased offices to STA, shared with the Township's transportation department. The offices are located on the second floor of the Ben Franklin Building, an alternative education junior and high school. The transportation offices have a dispatch area,

[6] Tr. 176–177.
[7] Tr. 511.
[8] P. Exh. 11.

where drivers come to get their bus keys in the morning and afternoon. The area has a phone, computer terminal, mailboxes for the drivers, and filing cabinets.

Frank Koziol encumbered the position of terminal manager until his September 11 discharge for unsatisfactory performance, including deficient recordkeeping. At that time, Wood became the acting terminal manager, and she remained in that position until mid-November. The facility has had no positions classified as supervisory or clerical, and "clerical employees" are not mentioned at all in the unit description in the stipulation.

STA handled summer school for the Township, coordinating about 25 runs. The regular school year started on August 28. From August 28–September 20, the eligibility cutoff date, STA employed about 50 drivers. There were 2 days of school the first week, 2 days the second week, and 3 days the third week. A full 5-day schedule did not begin until the fourth week.

Drivers engage in basically two types of driving. The first is "home and school," consisting of specific bus runs; picking students up at designated stops in the morning and taking them to school, and picking them up from school in the afternoon. The second, defined as anything other than home and school, is "trips," such as to athletic events or museums. No drivers solely do trips.

Prior to August 28, regular drivers bid on the home and school routes and were awarded them by seniority. On a weekly basis, they can also bid on trips for the following week, provided that there is no interference with their regular routes.[9]

In addition, the Employer has standby drivers who come in in the morning and in the afternoon and are assigned to fill in for unavailable regular drivers on home and school routes, or can receive trips based on weekly bidding or assignment. They are guaranteed 5-3/4 hours of pay a day regardless of whether they drive. In the relevant time period, there were three standby drivers (Kimberly Adams, Nicole Devincent, and Alicia Pekarski), whose eligibility to vote in the election was undisputed.[10] Smith was hired as a substitute driver. As distinguished from a standby driver, he was not guaranteed any amount of pay. I will say more about his particular situation when I discuss his challenge.

STA drivers drive three types of vehicles: (1) regular buses, holding 48 passengers or more; (2) minibuses, carrying 11–45 passengers; and (3) unlit vans, holding around 10 passengers, nine of which the Township owns. A commercial driver's license (CDL) with both passenger ("P") and student ("S") endorsements is required to drive either category of buses when students are aboard. The "S" endorsement is not required for the unlit vans or to drive the buses without students.

[9] See P. Exh. 10, dated October 10, which was posted on the wall next to the seniority roster, P. Exh. 9.

[10] Tr. 630 (stipulation); see Er. Exh. 17 (Excelsior List).

Since some of the objections interrelate with the Petitioner's position that the four employees in question were ineligible to vote because they were managerial, I will first address the challenges.

The Challenges

Evans was hired as a route coordinator and substitute CDL driver, Kurtz as a dispatcher, and Smith as a substitute driver. Although Williams and Wood testified that Williams was hired as a driver, I find that she was a route coordinator and substitute CDL driver in practice, if not in title.

In this regard, Evans and Kurtz received letters of understanding (offers of employment), which provided them with accumulated paid time off (PTO), 2 weeks' paid vacation, and 10 paid holidays—benefits not provided to drivers. Williams was evasive on whether she received such a letter, and the Employer did not produce one. Regardless, her timesheets, approved by Wood, show that she received holiday pay on September 2 and PTO hours during the week of September 17.[11] Wood testified that the holiday pay was a mistake but that STA took no steps to recoup the money. I find this testimony unbelievable, both as a business practice and based on Wood's involvement. Thus, Wood had actual knowledge that Williams was claiming holiday pay, and she approved it. Wood offered no explanation of why Williams received PTO hours. Williams' receipt of these benefits undermines both Williams' and Wood's testimony that she was hired only to drive. I note, too, Wood's testimony that in the period from August to November, Williams "probably would have been classified as" an office clerical employee."[12] Furthermore, I credit Hansell's testimony that she went to either Evans or Williams if she had an issue with her route or needed to change it and that Williams drove only if no other driver was available. Based on all of these factors, I find that, regardless of title, Williams performed the duties of a route coordinator/substitute driver.

None of the three classifications are mentioned in the stipulation. As part of their applications for hire, all four challenges had to submit documents necessary to drive school buses. These included a commercial drivers license (CDL), medical certification form, medical examination certificate, driver information request, drug test for DOT, school bus driver physical examination, and completion of wheel training.[13]

I note at the outset that the burden of proof rests on the party seeking to exclude a challenged individual from voting. *Sweetener Supply Corp.,* 349 NLRB 1122, 1122 (2007) (employee contended to be a confidential employee); *The Kroger*

[11] Er. Exh. 15 at 1–2 . At the minimum, the holiday pay would have been $120, the amount she was paid for nondriving hours.

[12] Tr. 654.

[13] Er. Exhs. 2 (Evans), 3 (Kurtz), 9 (Smith), and 16 (Williams). Smith's CDL had only a "P" endorsement; the others had both "P" and "S" endorsements.

Co., 342 NLRB 202, 203–204 (2004); *Golden Fan Inn,* 281 NLRB 226, 230 fn. 24 (1986).[14]

This general rule applies when a party challenges ballots on the basis that they have been cast by supervisors. See, e.g., *Alternate Concepts, Inc.,* 358 NLRB No. 38 (2012); *Parao & Grimes,* 321 NLRB 811, 812 (1996). In *NLRB v. Kentucky River Community Care, Inc.,* 532 US 706, 711 (2001), the Court found "reasonable and consistent with the Act" the Board's rule allocation of the burden of proof on the party claiming supervisory status. I see no logical reason for concluding that the burden for showing "managerial" should be any different.

Before individually addressing each of the four challenges, the applicable date for determining their statuses must be established inasmuch as this issue was raised at the hearing.

It is well settled that, in order to be eligible to vote, an individual must be employed and performing unit work on the established eligibility date, unless absent for certain specified reasons set out in the stipulation. *Dyncorp/Dynair Services,* 320 NLRB 120, 120 (1995); see also *Sweetener Supply Corp.,* 349 NLRB 1122, 1122 (2007). Accordingly, the date is September 20, the eligibility cutoff date to which the parties agreed and never changed. That one or more of the challenges may have performed more unit work in the period between September 20 and November 14, the date of the election, is immaterial. See *Meadow Valley Contractors, Inc.,* 314 NRLB 217, 217 (1994), in which the Board found ineligible to vote an employee who did not begin performing unit work on a regular basis until 2 weeks after the eligibility cutoff date. Accordingly, the facts in this section refer to the August 28–September 20 time period unless otherwise indicated.

Determining eligibility in the narrow time frame of approximately 3 weeks is made more difficult by its encompassing the beginning of the school year, when school was not in session for full 5-day weeks; the start of STA's first school year operation at the facility; and the terminal manager's termination for poor performance approximately 2 weeks into that period.

Concerning the standard for determining "managerial," in *NLRB v. Yeshiva University,* 444 U.S. 672, 682–683 (1980), the Court stated that an employee usually will be excluded from the protection of the Act as a managerial employee "only if he represents management interests by taking or recommending discretionary actions that effectively control or implement employer policy." This comports with the Board's longstanding precept that "[M]anagerial status is not conferred upon rank-and-file workers, or upon those who perform routing, but rather is reserved for those in

[14] The Petitioner cites *Specialty Healthcare & Rehabilitation Center of Mobile,* 357 NLRB No. 83 slip op. at 16 (2011), for the proposition that the Employer has the burden to demonstrate that the excluded employees shared "an overwhelming community of interest with the included employees." However, that burden comes into play only where an employer contends that the petitioned-for unit is inappropriate because it does not contain additional employees.

executive-type positions, those who are clearly aligned with management as true representatives of management." *General Dynamics Corp.,* 213 NLRB 851, 875 (1974). Put another way, management employees "formulate and effectuate management policies by expressing and making operative the decisions of their employer and who have discretion in the performance of their jobs independent of their employer's established policies." *Connecticut Humane Society,* 358 NLRB No. 31 slip op. at 23 (2012) (citations omitted). In sum, an employee must exercise a significant and independent role in major decision making to be found managerial.

The Board uses the following three-step test to resolve determinative challenges in cases with stipulated bargaining units. *Butler Asphalt,* 352 NLRB 189, 190 (2008); *Halsted Communications,* 347 NLRB 225, 225 (2006); *Caesar's Tahoe*, 337 NLRB 1096, 1097 (2002).

(1) First, whether the terms of the stipulation unambiguously express the objective intent of the parties to include or exclude the employees in question.

In assessing whether the stipulation is clear or ambiguous, the Board compares the express language of the stipulated bargaining unit with the disputed classification. *Butler Asphalt,* ibid; *Northwest Community Hospital,* 331 NLRB 307 (2000). Where a stipulation neither includes nor excludes a disputed classification, the Board will find the parties' intent is not clear. *Butler Asphalt,* ibid; *Los Angeles Water & Power Employees' Assn.,* 340 NLRB 1232, 1235 (2003). In this regard, the failure to include a disputed class of employees does not establish that the parties clearly intended to omit that classification. *Caesar's Tahoe,* above at 1098; *Bill Peters Chevrolet,* 303 NLRB 292, 292 (1999); see also *Butler Asphalt,* above at 190.

Where the stipulated election agreement excludes "all other employees," the stipulation will be read to clearly exclude classifications not expressly included in the unit description. See, e.g., *Bell Convalescent Hospital,* 337 NLRB 191, 191 (2001). Such is not the case here. The exclusions enumerate only the specific categories of professional employees, confidential employees, guards, and supervisors.

(2) If the terms are ambiguous, the Board will try to determine the parties' intent through usual methods of contract interpretation, including the examination of extrinsic evidence.

(3) If the parties' intent still remains unclear, the Board will employ its standard community-of-interest test to determine the bargaining unit.

In situations where the employee performs multiple job functions covered by one or more of the employer's job classifications, the employee is generally considered a dual-function employee. See *Columbia College,* 346 NLRB 726, 738 (2006); *Berea Publishing,* 140 NLRB 516 (1963). If some of the work is clearly included in the unit description, and the parties' intent to exclude the other work is

unclear, the Board applies a variation of the community-of-interest test under what is called a "dual-function employee" approach. See *USF Reddaway, Inc.,* 349 NLRB 329, 329 (2007); *Halstead Communications,* 347 NLRB 225, 226 (2006).

The test for determining whether a dual-function employee should be included in a unit is whether the employee performs unit work for sufficient periods of time to demonstrate that he or she has a substantial interest in the unit's wages, hours, and conditions of employment. *Bredero Shaw, a Division of Shawcor Ltd.,* 345 NLRB 782, 786 (2005); *Air Liquide America Corp.*, 324 NLRB 661, 662 (1997). The Board has no bright line rule as to the amount of time required to be spent performing unit work but rather makes this determination according to the facts of each case. *Bredero Shaw*, ibid; *Martin Enterprises*, 325 NLRB 714, 715 (1998). The Board generally finds that dual-function employees should be included in the unit if they spend 25 percent or more of their time performing unit work. *WLVI Inc.,* 349 NLRB 683, 863 fn. 5 (2007); see also *Arlington Masonry Supply, Inc.*, 339 NLRB 817, 820 fn. 3 (2003) (the Board suggested that 25 percent is sufficient); *Oxford Chemicals,* 286 NLRB 187, 187 (1987) (25 percent sufficient). On the other hand, less than 20 percent has been found insufficient. See *Continental Cablevision,* 298 NLRB 973, 974–975 (1990) (approximately 17 percent).

Once that standard has been determined, it is unnecessary and inappropriate to evaluate other aspects of the dual-function employee's terms and conditions of employment in a second tier community-of-interest analysis. *Continental Cablevision,* above at 973; *Oxford Chemicals,* above at 188.

Smith

Smith applied for the position of substitute bus driver on July 31.[15] At the time, and continuing to the present, Smith has been a regular part-time truck driver for FedEx, generally working mornings for 4-1/2 hours. He was hired as an STA driver on August 28, at a wage rate of $16.50 an hour.[16] The first couple of days that he was with STA, he was on vacation from FedEx and could work full days; thereafter, he worked only in the afternoons.

Prior to Smith's receipt of his "S" endorsement on September 26, as so stipulated by the parties and shown on page 7 of Employer's Exhibit 9, he could drive unlit vans carrying students, Township vans with students, and large and small buses without students, such as from one location to another or for maintenance.

Smith performed both nonrevenue office clerical work, for which he was paid $12.90 an hour; and driving, for which he received $16.50 an hour. Petitioner's Exhibit 19 consists of his earning statements and timesheets that encompass the period from August 28 through September 20. I consider them the most reliable evidence of how much driving Smith did vis-à-vis office clerical work. Because STA was paying him

[15] Er. Exh. 8.
[16] Er. Exh. 12.

more to drive than to perform office clerical duties, I have to assume that it would not have paid him for more driving time than the driving hours to which he was entitled. Conversely, I do not believe that Smith would have under reported his driving time, for which he was paid more than for his office clerical work.[17]

The earnings statements and timesheets show that from August 28–30, all of Smith's 23 hours were office clerical; from September 3–13, 19 of his hours were driving, and 10 were office; and from September 16–20, all of his 22.5 hours were driving. In summary, from August 28 through September 20, he worked 41.5 hours driving and 33 hours performing office/clerical work, thus spending over 55 percent of his time driving.

In performing office work, Smith was in Kurtz' dispatch area, where drivers came in to receive the keys to their vehicles. At Koziol's direction, Smith engaged in such functions as stuffing envelopes or taking them to the post office, answering phones, and talking to parents. He also occasionally distributed keys. During the first week or so of his employment, he performed solely such office clerical work. However, in the following pay period, almost 2/3 of his hours were spent in driving, and in the last applicable pay period, all of his hours were for driving.

Analysis

The mere fact that Smith performed clerical duties in and out of the office is insufficient to establish that he was a managerial employee. The record does not establish that he exercised an executive type of authority within the meaning of the cases cited above, including *NLRB v. Yeshiva University* and *General Dynamics Corp.*

The stipulation specifically included regular part-time drivers. Smith was a substitute driver who drove part time, he performed no supervisory duties, and the clerical work that he performed did not fit under any of the excluded categories. Arguably, he would be a unit employee under step 1 of the analysis.

If not, the following extrinsic evidence tends to lead to the conclusion that the parties intended that Smith be in the unit. It is undisputed that, from August 28 on, he worked openly in the dispatch area, where he performed office clerical work. Yet, the Petitioner agreed on September 23 to include regular part-time drivers and to eliminate the exclusion of "all others," as contained in its petition. Moreover, it chose not to exclude office clerical employees.

Assuming Smith would not be found to be in the unit under the second step, I conclude that he should be included in the unit under third step because he spent over 50 percent of his time driving and therefore had a substantial interest in the unit's wages, hours, and conditions of employment.

[17] Since Smith could not lawfully transport students in buses without an "S" endorsement, it appears that all of his driving was categorized as "Hometoschool" (sic) on the earnings statements.

Accordingly, I recommend that the challenge to Smith's ballot be overruled.

Evans, Kurtz, and Williams

In contrast to Smith, these individuals were hired to perform nondriving functions on a regular and permanent basis—Evans and Kurtz expressly; Williams de facto, if not formally.

The stipulation does not mention routers or dispatchers, either as included or excluded. The Petitioner does not now contend that Evans, Kurtz, or Williams are supervisory or fit under any of the other specified exclusions. Accordingly, I conclude that the parties' intent with respect to routers and dispatchers is not clear from the face of the stipulation.

Going on to the next step, an analysis of the extrinsic evidence, I find it noteworthy that the unit description in the petition included all CDL school bus drivers, mechanics, and fuelers, and excluded, inter alia, "all others." However, the stipulation excluded only professional employees, confidential employees, guards, and supervisors, and the Petitioner does not contend that any of the four challenges fit into any of those categories. This does suggest an intent to include the challenges. Nonetheless, the Board has found that an agreed-upon change in the unit description from that described in the petition is, alone, inconclusive evidence of the parties' intent. *Los Angeles Power,* 340 NLRB 1232, 1236 (2003). Here, there is no evidence that at the time the Petitioner entered into the stipulation, it expressly acquiesced in the inclusion of the challenges. Contrast, *Gala Foods*, 310 NLRB 1193, 1193 (1993). Accordingly, I will address the third step.

As opposed to drivers, Evans, Kurtz, and Williams had assigned places in the transportation office—Evans and Williams, enclosed offices; and Kurtz, an area in the dispatch area;[18] and they had office phones with extension numbers, as well as the option of receiving reimbursement for use of their personal cell phones for STA business. All three, with their contact information, were on the list of persons for STA and Township drivers to call, along with Koziol, Township Transportation Coordinator Donna Bradin, and Shakirah Alford of the Township.[19] From August 28 on, all three attended planning meetings with the STA terminal manager, Bradin, and Alford. In the Township Community Report, a 24-page document, there is a photograph of the three of them, described as STA "support staff," with Bradin."[20]

No one person was assigned to distribute keys to drivers in the dispatch area, and all three were among those who did so. Evans, Kurtz, and Williams at all times

[18] See P. Exh. 25, stipulated to represent the office layout (not to scale), from August 28–November 14.

[19] P. Exh. 6.

[20] P. Exh. 18 at 23.

operated under the direct and immediate supervision of the STA terminal manager, and the record does not show that they ever served as acting managers.

By August 28, all of the bus routes were established and entered into the computerized system that STA had set up. In August and September, Bradin had to approve any new route stops, and Wood had to approve any major changes in the established routes.

Evans

Evans applied for a driver position but was given the choice of four positions, including coordinator and substitute CDL driver, for which he was hired on June 18 at a wage rate of $18.25 an hour and with a starting date of June 24.[21] The offer of employment was contingent upon, inter alia, his maintaining clear drugs tests and a CDL license with "S" and "P" endorsements. Along with the letter of understanding, he received the job description for routing coordinator.[22] It listed duties common to all drivers but also included overall responsibility for routing, including route monitoring and adjustments, at the request of the manager; assisting the manager with monthly billing; answering phones and two-way company radios; and communicating with schools, parents, and drivers. It also had as a duty, procuring or maintaining a school bus CDL license and possibly being required to drive on occasion.

Based on Evans' and Hansell's testimony, I find that Evans performed all of the above enumerated duties except assisting the manager in billing. In July, he received 3 days of training for routing, including computer training. He has been a state certified trainer in behind the wheel training since 2008 but did not do any training of STA drivers in the relevant time period.

As determined by a computerized program, Evans could make minor adjustments, including making last-minute changes in student addresses or phone numbers, or adding a student to a bus stop within a block or so. He related said changes to drivers. He did very limited dispatching.

Evans was paid a fixed hourly rate regardless of the work he performed, and his earnings statements in August and September[23] do not reflect how much driving he did. However, his timesheet for September 2–13 indicates that he drove bus 84 on 7 out of 9 work days, 2 hours a day, for a total of 14 hours out of 92.[24] At the time, bus 84 had no assigned driver, and Evans drove it when no standby driver was available. Evans testified without controversion that the normal pretrip is approximately 20 minutes. Adding prep time, the total time was 16-1/3 hours. On the other hand, his timesheets for August 19–30 and September 16–27 do not reflect any driving.[25]

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21 P. Exh. 14, letter of understanding.
22 P. Exh. 16.
23 P. Exh. 15 at 1–3.
24 Er. Exh. 15 at 5.
25 Id. at 4, 6.

Evans testified that he did not always notate his driving time because he was paid the same rate regardless of work; that he may have driven on other days not reflected in his time sheets but could not be certain which ones; and that he "most likely" was driving bus 84 the week of September 16.[26] Wood implicitly corroborated his testimony by testifying that she requested that he document his driving times.

Analysis

Evans had his own office and received a higher pay than drivers, but these factors, taken alone, are not enough on which to base to a conclusion that he was a managerial employee. Nor does what the Petitioner perceived as his vocal opposition to unionization.[27] Because of Evans' limited authority with respect to routing, his direct and immediate supervision by Koziol, then Wood, and his serving more as a conduit than as a decision maker, I conclude that he was not a managerial employee and ineligible on this basis. See *NLRB v. Yeshiva University,* supra.

As to Evans' eligibility as a dual-function employee, the timesheets reflect that Evans drove approximately 16-1/3 hours out of a total of 179 hours, including overtime, or less than 10 percent. He may well have driven more, but determining how much more is impossible, and I cannot base a higher percentage on conjecture.

Therefore, I conclude that Evans spent insufficient time as a driver during the relevant time period to be included in the unit. In reaching this result, I do not rely on *Becker Co.,* 343 NLRB 51 (2004), cited by the Petitioner, which held that when employees are explicitly excluded from a bargaining unit, the burden of proving they are included in the unit due to their dual-function status rests with the party asserting dual-function status. Here, the stipulation was ambiguous on whether Evans was in or out of the unit and, hence, did not explicitly exclude him.

I note that the Employer's records reflect that Evans drove more after September 20. If this has continued, he might be eligible in the event of a rerun election.

Accordingly, I recommend that that the challenge to Evans' ballot be sustained.

Williams

The lack of documentation concerning Williams' hire seems rather odd considering the large-scale nature of the Employer's business. In any event, as part of the application process, she did submit documentation necessary to be a driver. She

[26] Tr. 347.

[27] See Er. Exh. 4, dated November 6, in which the Petitioner referred to Evans, Kurtz, and Williams as management "flunkies."

received $19 an hour for driving and $15 an hour for office work and performed duties similar to Evans', including talking to parents on routing matters when needed.

Williams' timesheets show that for the week ending September 6, she had 16.5 hours of driving and 23.5 office hours; for the week ending September 13, 18 hours of driving and 46 office hours; and for the week ending September 21, 25 hours of driving and 36.5 office hours.[28] The totals come out to 59.5 hours of driving, and 106 for office.

On October 31, Williams was promoted to the position of dispatcher, effective November 4.[29] Neither party contends that this promotion affected her voting eligibility.

Analysis

For the same reasons I concluded that Evans was not a managerial employee, I conclude the same for Williams.

Since Williams drove almost 3/8 of her working time during the relevant period, she meets the threshold of eligible driver as a dual-function employee.

Accordingly, I recommend that the challenge to Williams' ballot be overruled.

Kurtz

Kurtz started working for STA as a driver in August as a dispatcher, the job for which she applied. She received an offer of employment similar to Evans', along with the job description for dispatcher.[30] In addition to duties described in the routing coordinator job description, it included assisting the manager in all driver disciplinary matters and overseeing yearly road test evaluations; assisting the manager in ensuring that all drivers complete necessary job related training, and planning driver safety meetings; and knowledge and implementation of school district contracts. As with the dispatcher description, one listed duty was procuring or maintaining a school bus CDL license and possible occasional driving.

Kurtz did almost all of the dispatching, and only rarely did Evans or Williams perform that function in her stead. Her routine duties included ensuring that every bus had a driver and every driver a bus, keeping track of changes in availability, answering phones, and distributing and collecting drivers' paperwork.

Since Kurtz was paid $19 an hour regardless of the work that she performed, her earning statements and pay sheets are silent on any hours that she drove. Kurtz candidly testified that she did not drive much at first because of the press of her

[28] Er. Exh. 15.
[29] Er. Exh. 14.
[30] P. Exh. 12.

dispatch duties but that once dispatch was more established (in late October or early November, outside the relevant time period), she drove more, maybe an average of once or twice a week for an hour or 2 a week. Her testimony thus makes it clear that her driving time was very limited, under, at most, 5 hours a week, including preparation time.

In August, Kurtz was sent for training to become a certified school bus driver trainer, but she did not train any new drivers in the relevant time frame. In October, Kurtz sat in in as a management witness in disciplinary action meetings that Wood conducted, but this also postdated the applicable time period.

Analysis

Kurtz came closer to a managerial employee than Evans and Williams. However, as with them, she exercised limited decision-making authority. Regular routes were assigned by bids on the basis of seniority, and her assignments of persons to fill in for them was dictated by who was available and did not entail her independent judgment on who was qualified. Significantly, the facility at all times had an on-site manager (first Koziol, then Wood), as well as Township management. In these circumstances, I conclude that the Petitioner has failed to meet its burden of showing that she was a managerial employee. See *NLRB v. Yeshiva University,* supra.

As far as her eligibility to vote as a dual-function employee, Kurtz performed very limited driving, under 5 hours a week, at most, and thus did not serve as a driver for a sufficient amount of time to establish her unit status as of September 20.

Accordingly, I recommend that the challenge to her ballot be sustained.

Objections

As the Board held in *Crown Bolt, Inc.,* 343 NLRB 776, 777 (2004), "[T]here is a strong presumption that ballots cast under specific NLRB procedural safeguards reflect the true desires of the employees . . . [T]he burden of proof on parties seeking to have a Board-supervised election set aside is 'a heavy one." (Internal citations omitted); see also, *Dairyland USA Corp.,* 347 NLRB 310, 313 (2006), enfd. sub nom. *NLRB v. Food & Commercial Workers Local 34–8–S,* 273 Fed. Appx. 40 (2d Cir. 2008) ("[A]n election will not lightly be set aside.").

The Board will set aside an election when "the objectionable conduct so interfered with the necessary 'laboratory conditions' as to prevent the employees' expression of a free choice in the election." *Sanitation Salvage Corp.,* 359 NLRB No. 130, slip op. at 2 (2013), citing *Dairyland USA Corp.,* ibid.

In evaluating party conduct during the critical period, the Board applies an objective standard, under which conduct is found to be objectionable if it has "the

tendency to interfere with the employees' freedom of choice." *Cedar Sinai Medical Center,* 342 NLRB 596, 597 (2004), citing *Cambridge Tool & Mfg. Co.,* 316 NLRB 716, 716 (1995).

In deciding whether such interference has occurred under this standard, the Board considers: (1) the number of incidents of misconduct; (2) the severity of the incidents and whether they were likely to cause fear among employees in the bargaining unit; (3) the number of employees in the bargaining unit subjected to the misconduct; (4) the proximity of the misconduct to the election date; (5) the degree of persistence of the misconduct in the minds of the bargaining unit employees; (6) the extent of dissemination of the misconduct among bargaining unit employees; (7) the effect, if any, of misconduct by the opposing party to cancel out the effects of the original misconduct; (8) the closeness of the final vote; (9) and the degree to which the misconduct can be attributed to the party. See, e.g., *Cedar Sinai Medical Center,* ibid; *Taylor Wharton Division*, 336 NLRB 157, 158 (2001); *Chicago Metallic Corp.*, 273 NLRB 1677, 1704 (1985), enfd. 794 F.2d 527 (9th Cir. 1986).

Many of the Petitioner's objections relate to conduct by Evans, Kurtz, Smith, and Williams, who it contends are managerial. I have rejected this argument. However, inasmuch as a distinction might be drawn between their actual status and their perceived status by drivers, I will further address this point. Evans and Williams had their own private offices in the suite of offices which included the office of STA's terminal manager, as well as Township transportation management. This is a factor weighing in favor of finding that drivers would reasonably have considered them aligned or closely identified with management. See *First Student Inc.,* 355 NLRB 410 (2010); *Sundward Materials,* 304 NLRB 780 (1991). However, outside of driving, the job duties of all four challenges were essential office clerical in nature in the August 28–September 20 time frame. Drivers' regular daily routes were decided in advance based on seniority bidding, and standby or substitute drivers were utilized based on availability, not a determination of their qualifications. Further, the routing system was computerized, and the facility at all times had a facility manager. None of the four wore special uniforms or attire vis-à-vis the drivers. In all of these circumstances, I do not believe that drivers would have reasonably perceived them as managerial. Again, the fact that they may have voiced opposition to unionization and been viewed as pro-management by the Petitioner does not change this conclusion.

Objection No. 1

During the election, the Employer utilized Williams as its observer despite the Petitioner's objection.

Williams served as the Company observer over the Petitioner's objection. The Petitioner contends that her close alignment with management was coercive.

For the reasons stated above, I have concluded that Williams was not managerial or reasonably perceived by drivers as being such.

Accordingly, I recommend that Objection No. 1 be overruled.

Objection No. 2

During the election, Williams wore a shirt that was worn only by STA supervisors and management.

Argeros, Hansell, and Pease all testified that Williams wore a black golf shirt with an STA logo. On the other hand, Evans, Kurtz, and Smith testified that they have never seen a black shirt with STA insignia, and it is undisputed that STA had earlier distributed to drivers black shirts with the logo "Bristol Township."[31]

Williams testified that she wore a black shirt. When she was asked if it had any insignia, she replied that she believed it had the emblem, "Bristol Township Transportation." In response to the Petitioner's counsel question about her use of the term "believe," she answered, "That's what's on the shirt, yes," but then added, "That's what I believe it says on there."[32] I would expect that she could have given a more definite response, and her equivocation in answering was suspicious. I also note that the Employer's counsel did not specifically ask Evans or Smith what Williams wore that day, and Kurtz could not recall how Williams was dressed.

Thus, the testimony of Argeros, Hansell, and Pease that Williams' shirt had the STA logo was not directly contradicted. Even if the Employer did not make any shirts with the STA logo, this does not necessarily preclude a finding that Williams wore one on the day of the election since she could have sewn on such insignia.

Based on all of the above, I find that Williams wore a shirt with STA insignia as she served as the Company observer. However, I do not find, as claimed by the Petitioner, that such a shirt was worn by STA supervisors and management or by anyone else, for that matter.

For reasons already stated, I have concluded that Williams was an eligible voter and not an improper person to serve as the Company observer. As to her shirt, the Board discourages, but does not prohibit, observers from wearing campaign insignia. *Union-Haul Co. of Nevada, Inc.,* 341 NLRB 195, 196 (2004), citing *Larkwood Farms,* 178 NLRB 226 (1996) ("Vote No" message on hat worn by employer's observer not objectionable). Here, the shirt had only the STA insignia and was devoid of any express message on how to vote.

Accordingly, I recommend that Objection No. 2 be overruled.

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[31] See Er. Exh. 1, a group photo.

[32] Tr. 516.

Objection No. 3

> On the morning of the day of the election, Williams and Smith distributed vote no material to unit employees as they were distributing keys to the buses.

That morning, by their own accounts, Evans and Williams passed out keys to the drivers in the dispatch area and gave some of them Lifesavers, around which was rolled a paper message that read (italics and other markings omitted):

> You have the right today . . . .
> To make your voice be heard.
> While there is still time left.
> Vote Proud.
> Vote Now.
> Vote Know [sic].
> Be your own Lifesaver.

Both told drivers to vote but said nothing else. Hansell was one of the 5–10 drivers to whom Evans gave the Lifesavers. He did not say anything to her when he did so.

The Petitioner adduced no evidence that Smith distributed the Lifesavers to any unit employees, and Hansell did not recall seeing him on the premises that day. O'Donnell, a Township driver, testified that Smith, in the presence of another Township driver, more or less shoved the Lifesavers in her face and said "Save your job." Smith denied that he gave Lifesavers to anyone. Inasmuch as his purported conduct involved nonunit employees, I need not decide whether O'Donnell's account was plausible or consider what would have motivated Smith to propagandize a Township driver who was already represented by the Petitioner.

For reasons previously stated, I have found that neither Evans nor Williams were managerial employees and that drivers would not reasonably have perceived them as such. Nothing in the record indicates that the Employer played any role in the preparation or distribution of the material.

Accordingly, I recommend that Objection No. 3 be overruled.

Objection No. 4

> During the election, security personnel from the Township were present in the hallway where voters were standing in line to go into vote.

Based on the testimony of Argeros, Hansell, Kurtz, and Pease, I find the following. Township facilities employee or guard Chris Hunt, who wore his usual attire of khakis and a polo shirt, was in the conference room during the preelection

conference and told Argeros that he was sent there by the Township. After the conference, he went to the hallway outside the conference room and said that he was there to observe what was going on (Argeros) and/or to make sure that there were no problems (Pease). During the election, he walked the hallway outside the voting area. There is no evidence that he engaged in any conversations with unit employees or did anything more than walk around.

The transportation offices were shared by STA and the Township, the building was used for school purposes, and Hunt had been at the facility before, as reflected by Kurtz' knowing him by name. In these circumstances, I do not find that drivers would have found his mere presence in the hallway coercive.

I note that even when third-party threats are asserted, the Board will not set aside an election unless the objecting party proves that the conduct was "'so aggravated as to create a general atmosphere of fear and reprisal rendering a free election impossible.'" *Mastec Direct TV,* 356 NLRB No. 110, slip op. at 3 (2011), citing *Westwood Horizons Hotel,* 270 NLRB 802, 803 (1984). No such threats are averred here.

Accordingly, I recommend that Objection No. 4 be overruled.

Objection No. 5

During the election, Kurtz stood outside of the polling area and engaged in prolonged conversations with those waiting to vote.

It is undisputed, and I find, that Kurtz went with drivers to the entrance to the voting area. She then remained behind as other drivers came and went inside, and she stayed in the hallway for at least half an hour before going in and casting a challenged ballot

Hansell testified that all she heard Kurtz say was "Hi" to persons going in to the polling area,[33] consistent with Kurtz' testimony that she did not tell the employees how to vote, or say anything about the election. The evidence thus fails to support the Petitioner's assertion that Kurtz engaged in "prolonged conversations" with those waiting to vote.

I have found that although Kurtz was ineligible to vote, she was not a managerial employee or reasonably perceived to be such. In any event, her merely standing out in the hallway and greeting employees can hardly be deemed threatening or coercive.

Accordingly, I recommend that Objection No. 5 be overruled.

[33] Tr. 70.

Objection No. 6

Before and during the election, as the Petitioner attempted to leaflet and speak with potential voters before they went inside to vote, John Carey, a management representative, maintained a nearby presence, thereby interfering with their conduct and giving the impression of surveillance.

Carey was and is in charge of special projects for STA, formerly holding the position of vice president of business development. He was not in the drivers' direct chain of command.

The Employer's counsel did not ask Carey about his presence outside the building on the morning of the election, so the testimony of the Petitioner's witnesses about what transpired there went unrebutted, with the caveat that their versions were not fully consistent, either internally or with each other, as to how long Carey was with them in the parking lot during the election and whether they stayed in one location or moved.

Thus, Argeros first testified that Carey was with them from about 9:30 a.m. to between 10 and 10:30 a.m. but later changed the times to 9:30 a.m. to approximately 11 or 11:10 a.m. O'Donnell testified that she, Argeros, and Pease moved to the other side of the parking lot that morning, but Pease testified that they stayed in the same area, moving 10 feet at most, and Argeros said nothing about their changing location.

I find the following. On November 14, before and during the election, union agents and other nonSTA employees came to the parking lot to distribute leaflets. Carey, who wore a shirt with the STA insignia, stayed in the immediate vicinity of Argeros for much, if not most, of the time that Argeros was there. He engaged in casual conversation with Argeros, but no drivers were present; they stopped coming over to Argeros after Carey arrived. During the time that Carey was present, O'Donnell walked away from where he and Argeros were, and she was able to hand out leaflets to drivers.

It is well established that management officials may observe open and public union activity on or near the employer's premises as long as they do not engage in behavior that is "out of the ordinary." *Partylite Worldwide, Inc.,* 344 NLRB 1342, 1342 (2005), citing *Arrow Automotive Industries,* 258 NLRB 860 (1981), enfd. 679 F.2d 875 (4th Cir. 1982). *Partylite* found unlawful surveillance when eight high-ranking managers and supervisors, on three separate occasions shortly before the election, stood at entrances to the employee parking lot watching the union give literature to employees as they entered and exited the parking lot during shift changes. The Board noted that the hearing officer credited employee testimony that their presence at entrances to the parking lot was "surprising" and an "unusual occurrence." Ibid (footnotes omitted). Thus, *Partylite* is distinguishable in the number of management representatives, their positions over unit employees, their locations within the parking

lot, and the number of times that they were present. Carey's conduct can hardly be considered as equivalent.

Based on the above, I conclude that the evidence fails to establish that Carey either significantly interfered with the Petitioner's preelection activities or gave the impression of surveillance.

Accordingly, I recommend that Objection No. 6 be overruled.

Objections Nos. 8 and 9

> No. 8: At meetings with employees on about September 25 and the first week of October concerning the election, Tim Krise, STA's Pennsylvania vice president, threatened that if the Petitioner won, STA could walk away from its contract with the Township
>
> No. 9: At the September 25 meeting, Krise mentioned a Christmas bonus to employees at the facility, even though they had never before been notified of such a benefit.

Driver Hansell was the only witness who testified concerning four or five management preelection meetings with drivers, at which Vice President Krise was the primary spokesperson, held from September 25–November 12. Thus, the Employer called no one to rebut her testimony about what Krise said at the two meetings in question, and I draw an adverse inference from the Employer's failure to call him, in the absence of an explanation of why he could not be present. See *Champion River Co.,* 314 NLRB 1097, 1099 fn. 8 (1994); *Douglas Aircraft Co.,* 308 NLRB 1217, 1217 fn. 1 (1992). Accordingly, although Hansell's uncontroverted testimony contained some inconsistencies, possibly because of the number of meetings, I credit her in substance.

Attendance at all of the meetings was voluntary. The first took place on about September 25 in the building's auditorium, was attended by 20–30 drivers (plus the challenges), and lasted for 45 minutes to an hour. Krise discussed the election process and asked the drivers to give him and STA a chance. During the course of his remarks, he stated that the contract that STA had with the Township provided that STA had an out or could walk away if (operations) became too costly. On cross-examination, she did indicate that Krise also stated during the meeting that he wanted the facility to succeed and wanted to be in it for the "long haul."[34]

During his recitation of the benefits that STA offered, Krise mentioned a Christmas bonus to employees, and someone asked "What Christmas bonus?" Based on Hansell's testimony, I find it that he responded with surprise that employees did not know of the bonus and indicated that he could not discuss it further because of the

[34] Tr. 104–105.

Union and the pending vote.[35] He did not raise the subject of a Christmas bonus at any later meetings.

On the other hand, Hansell testified that, at least in the second meeting, Krise again brought up STA's contractual option to walk away. This meeting took place in the first week of October in either the auditorium or the upstairs board room and was attended by approximately the same number of drivers. Because she did not specifically identify any later meetings in which he raised the subject, I cannot find as a fact that he did so.

Neither the nationwide employee handbook nor the description of the facility's wage/benefit package[36] that Hansell received as a new employee mention a Christmas bonus as an employee benefit. Wood testified that STA employees in general do receive such a bonus each year and that she did not know why it was not mentioned in the list of benefits provided to facility drivers.

Based on the above, I find that Krise, in the context of the pending election, on about September 25 and in the first week of October, stated in effect that if unionization resulted in too much in the way of additional costs, STA could cancel its contract with the Township. I also find that his mentioning at the September meeting that STA provided a Christmas bonus marked the first time that unit employees heard of it.

Analysis, Objection No. 8

As to Krise's statement regarding economic consequences of unionization, such speech is protected under Section 8(c) of the Act so long as it is "carefully phrased on the basis of objective fact to convey [its] belief as to demonstrably probable consequences beyond [its] control." *NLRB v. Gissel Packing Co.*, 395 U.S. 575, 595, 618 (1969). The Court went on to state, "If there is any implication that an employer may or may not take action solely on his own initiative **for reasons unrelated to economic necessities** and known only to him, the statement is no longer a reasonable prediction based on available facts but a threat of retaliation based on misrepresentation and coercion." Ibid. (emphasis added).

In the absence of other coercive circumstances, an employer's reference in preelection campaign materials to the possible negative consequences of unionization does not remove the materials from the protections of Section 8(c). *UARCO, Inc.,* 268 NLRB 55, 58 (1978), petition for review denied sub nom. 865 F.2d 258 (6th Cir. 1988); general principle confirmed in *DHL Express, Inc.,* 355 NLRB 1399 (2010). There is no logical reason not to apply that same reasoning to oral communications.

In a case very similar on its facts, *Miller Industries Towing Equipment, Inc.,* 342 NLRB 1074, 1074 (2004), the Board found protected under Section 8(c) a general

[35] See Tr. 28, 29, 102.
[36] P. Exhs. 4 at 26, 5.

manager's statements at meetings "of the possibility of plant closures if there is a Union due to costing the Company money." The Board stressed that "general references to 'possibilities' are inadequate to establish that [the general manager] threatened that unionization **would** result in layoffs." Ibid (emphasis added).

Similarly, in *Enjo Contracting Co., Inc.,* 340 NLRB 1340, 1340 (2003), enfd. 131 Fed.Appx. 769 (2005), the Board found lawful a company president's statements at meetings that "if the union gets[s] in and start[s] to make demands, we wouldn't be able to compete with our competitors." The Board stated, "[D]uring a union organizational campaign, an employer has the right under Section 8(c) to convey to employees a view of its present economic situation and ask them to consider whether union representation would improve or worsen that situation." Ibid. at 1340–1341.

Here, Krise did not state or even imply that unionization would necessarily cause STA to walk away from the contract and close the facility. Moreover, any negative impact of Krise's statements about the Township contract were mitigated by his stating that he wanted to be there "for the long haul" and for the facility to succeed. Additionally, the statements were brief and made during the course of meetings that were 45 minutes to an hour in length. Therefore, they were not the focus of the meeting or given emphasis.

Finally, the meetings at which Krise made the statements took place approximately 5 weeks before the election, and there were intervening meetings wherein no such statements were made. A 1-week hiatus between the statements and the election has been found too remote to have affected the election's outcome. *Washington Fruit & Produce Co.,* 343 NLRB 1215, 1223 (2004); *Recycle America, 3*10 NLRB 629. 629 (1993).

Accordingly, I recommend that Objection No. 8 be overruled.

Analysis, Objection No. 9

The hiatus between Krise's statement about the Christmas bonus and the election was approximately 6 weeks, he said nothing again on the subject in any meeting after the first one, the statement was not tied in to the outcome of the vote, and its utterance appears to have been the result of an unintentional error rather than a preplanned and deliberate effort to promise a benefit to drivers if they voted against union representation.

Accordingly, I recommend that Objection No. 9 be overruled.

Conclusions[37]

Based upon the above, I recommend that the challenges to the ballots of Evans and Kurtz be sustained, that the challenges to the ballots of Smith and Williams be overruled and their ballots be opened and counted, and that all of the Petitioner's objections be overruled. The Regional Office, after opening and counting the ballots herein, shall issue a revised tally of ballots and an appropriate certification, depending upon which party receives a majority of the votes cast.

Dated, Washington, D.C. June 18, 2014

_____
Ira Sandron
Administrative Law Judge

[37] Under the provisions of Sec. 102.69 of the Board's Rules and Regulations, exceptions to this Report may be filed with the Board in Washington, DC within 14 days from the date of issuance of this Report and recommendations. Exceptions must be received by the Board in Washington, DC by July 2, 2014.